

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

IN RE:

Thomas W Goedert
Carol L Goedert

Case No.: 18-27787
Chapter: 11
Hearing Date: 11/27/18

Debtor(s) Judge Timothy A. Barnes

NOTICE OF MOTION

TO: Patrick C. Layng, Chapter 13 Trustee, 219 S Dearborn St, Room 873, Chicago, IL 60604 by electronic notice through ECF
Thomas W Goedert, Carol L Goedert, Debtor(s), 2232 Skylane Dr., Naperville, IL 60564
Ben L Schneider, Attorney for Debtor(s), 8424 Skokie Blvd.Suite 200, Skokie, IL 60077 by electronic notice through ECF

*** SEE ATTACHED LIST OF CREDITORS ***

PLEASE TAKE NOTICE that on the 11/27/18, at 10:00AM, or as soon thereafter as counsel may be heard, I shall appear before the Honorable Judge Timothy A. Barnes, Bankruptcy Judge, in the courtroom usually occupied by him/her at the Joliet City Hall, 150 West Jefferson Street, 2nd Floor, Joliet, Illinois 60432, room 744, or before any other Bankruptcy Judge who may be sitting in his/her place and stead, and shall then and there present this Motion of the undersigned, a copy of which is attached hereto and herewith served upon you, and shall pray for the entry of an Order in compliance therewith, at which time you may appear if you so desire.

PROOF OF SERVICE

The undersigned, an attorney, hereby certifies that I have served a copy of this Notice along with the attached Motion upon the parties listed above, as to the Trustee and Debtor's attorney via electronic notice on November 7, 2018 and as to all other parties by causing same to be mailed in a properly addressed envelope, postage prepaid, from 7140 Monroe Street, Willowbrook, IL 60527 before the hour of 5:00 PM on November 7, 2018.

/s/ Peter C. Bastianen

Attorney for Movant

Berton J. Maley ARDC#6209399
Rachael A. Stokas ARDC#6276349
Gloria C. Tsotsos ARDC#6274279
Jose G. Moreno ARDC#6229900
Peter C. Bastianen ARDC#6244346
Joel P. Fonferko ARDC#6276490
Laura A. Hrisko ARDC#6230993
Codilis & Associates, P.C.
15W030 North Frontage Road, Suite 100
Burr Ridge, IL 60527
(630) 794-5300
C&A FILE (14-17-10845)

NOTE: This law firm is a debt collector.

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that I have served a copy of this Notice along with the attached Motion upon the parties listed below, as to the Trustee and Debtor's attorney via electronic notice on November 7, 2018 and as to all other parties by causing same to be mailed in a properly addressed envelope, postage prepaid, from 7140 Monroe Street, Willowbrook, IL 60527 before the hour of 5:00 PM on November 7, 2018.

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List of Creditors

ACAR Leasing LTD
DBA GM Financial Leasing
PO Box 183853
Arlington, TX 76096

Ally Financial
PO Box 130424
Roseville, MN 55113-0004

Bank Of America, N. A.
Po Box 982284
El Paso, TX 79998

Bridgecrest Credit Company, LLC
PO Box 29018
Phoenix, AZ 85038

Capital One
Beckett and Lee LLP
PO Box 3001

Malvern, PA 19355-0701
Cavalry SPV I, LLC
500 Summit Lake Dr.
Suite 400
Valhalla, NY 10595

Crane, Simon, Clar & Dan
135 S. LaSalle St., Suite 3705
Chicago, IL 60603

Hinsdale Orthopaedics
PO Box 5461
Carol Stream, IL 60197

Illinois Department of Revenue
PO Box 64338
Chicago, IL 60664-0338

Internal Revenue Service
PO Box 7346
Philadelphia, PA 19101

Medical Business Bureau
1460 Renaissance Dr. # 400
Park Ridge, IL 60068
Merchant's Credit Guide
223 W. Jackson Blvd. Suite 700
Chicago, IL 60606

Nationstar Mortgage LLC
PO Box 619096
Dallas, TX 75261

Nationwide Credit Collection, Inc.
815 Commerce Dr., Ste. 270
Oak Brook, IL 60523

Raul Patino
5554 S. Sayre Ave.
Chicago, IL 60638

Red Fern Landscaping
71 E. Timberlake Trl.
Oswego, IL 60543

RMP
2250 E. Devon Ave., Suite 245
Des Plaines, IL 60018

Santander Consumer USA
Po Box 961275
Fort Worth, TX 76161

Stillwater Homeowners Association
PO Box 803555
Dallas, TX 75380

US Department of Education
121 South 13th St., Suite 201
Lincoln, NE 68508

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IN RE:

Thomas W Goedert
Carol L Goedert

Debtor(s)

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MOTION FOR RELIEF FROM THE AUTOMATIC STAY

NOW COMES U.S. BANK NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS TRUSTEE FOR THE RMAC TRUST, SERIES 2016-CTT, (hereinafter "Movant"), by and through its attorneys, Codilis & Associates, P.C., and moves this Honorable Court pursuant to 11 U.S.C. §362(d) for an Order granting Movant relief from the automatic stay and in support thereof states as follows:

1. This Court has jurisdiction pursuant to 28 U.S.C. §1334 and Internal Operating Procedure 15(a) of the United States District Court for the Northern District of Illinois;
2. The Debtor is indebted to Movant for which the Movant claims a valid security interest in the property commonly known as 2232 Skylane Dr., Naperville, Illinois, which is Debtors' principal residence;
3. This security interest arose from a Note and Mortgage, executed on 08/26/10, in the amount of \$413,400.00;
4. The payoff balance due Movant on account of said indebtedness as of 10/30/18, was in the amount of \$452,749.51;

5. Enforcement of this security interest has been stayed automatically by operation of 11 U.S.C. §362 of the Bankruptcy Code upon Debtor filing of this petition on 10/02/2018;

6. No plan has been filed;

7. Movant's claim is secured only by the Debtors' principal residence;

8. Section 1123(b)(5) of the bankruptcy code provides that a Chapter 11 plan may, "modify the rights of holders of secured claims, *other than a claim secured only by a security interest in real property that is the debtor's principal residence*, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims (emphasis added)";

9. Chapter 11 does not contain provisions, as does chapter 13, which allows a debtor to "cure a default within a reasonable time and maintain current payments" on a claim secured only by debtor's principal residence;

10. The Bankruptcy Court in *In re: Clay*, 204 B.R. 786 (N.D. Ala 1996) held that matter of law, §1123(b)(5) prohibits debtor(s) from curing even a balloon-type mortgage within a plan of reorganization. As a result, the Court in *Clay* granted secured creditor's motion for relief unless the Debtor was willing to convert to a chapter 13. *Clay* at 793;

11. Movant is entitled to relief from the automatic stay under 11 U.S.C. §362(d) for the following reasons:

a. The Debtors are default in the performance of the terms and conditions of said note and mortgage and are contractually due for the 03/01/17 mortgage payment with a total default as of 11/01/18 of \$67,474.64, including post-petition attorney fees and costs of \$1,031.00;

b. Debtor cannot modify Movant's contractual rights in a chapter 11 Plan;

12. Movant has incurred attorney fees and/or costs in connection with this bankruptcy proceeding which have been included in the calculation of any default figures quoted herein subject to court approval, including:

\$850.00	for Preparation of Notice and Motion for Relief from the Automatic Stay, and prosecution of same
\$181.00	for Court filing fee

13. This Court has authority to order that Rule 4001(a)(3) is not applicable to the order entered in granting this motion, that such an order is necessary in order to permit Movant to timely participate in the state court action, and Movant requests this Court so order;

WHEREFORE, U.S. BANK NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS TRUSTEE FOR THE RMAC TRUST, SERIES 2016-CTT prays this Court enter an Order pursuant to 11 U.S.C. §362(d) modifying the automatic stay as to Movant, allowing the fees and costs described herein to be added to the indebtedness pursuant to the terms of the note and mortgage, and for such other and further relief as this Court may deem just and proper.

Dated this November 7, 2018.

Respectfully Submitted,
Codilis & Associates, P.C.

By: /s/ Peter C. Bastianen

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